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December 3, 2003

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth St., N.W.  
Washington, D.C. 20554

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Re: AT&T Petition for Declaratory Ruling that AT&T's  
Phone-to-Phone IP Telephony Services Are Exempt From  
Access Charges, WC Docket No. 02-361

Dear Ms. Dortch:

On behalf of WilTel Communications Group, Inc. ("WilTel"), Adam Kupetsky, Director of Regulatory/Regulatory Counsel at WilTel, and my colleague Peter Rohrbach and I made *ex parte* presentations yesterday to the following individuals: (1) Christopher Libertelli, senior legal advisor to Chairman Powell; (2) Matthew Brill, senior legal advisor to Commissioner Abernathy; (3) Jessica Rosenworcel, legal advisor to Commissioner Copps; (4) Dan Gonzalez, senior legal advisor to Commissioner Martin; and (5) the following members of the Wireline Competition Bureau staff: William Maher (Bureau Chief), Jeffrey Carlisle (Deputy Bureau Chief), Michelle Carey (Chief, Competition Policy Division), Russell Hanser, Jennifer McKee, Tom Navin, Josh Swift, Robert Tanner, and Julie Veach. The attached materials summarize the content of the presentations.

If you have any questions, please contact me.

Respectfully submitted,



David L. Sieradzki  
Counsel for WilTel

cc: Staff members listed above

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**The FCC Should Issue An Interim  
Ruling on the AT&T VOIP Petition Now**

**Summary:** Before or contemporaneously with the VOIP rulemaking, the Commission should tell the industry whether or not IP-based transport currently is subject to access charges and universal service contributions (even if that may change in the future).

**The Narrow But Critical Issue Needing a Decision Now:** *Does use of IP transport in a network, without more, make services provided over that transport "information services," or are they "telecommunications services" subject to access charges and universal service contributions?*

- Regardless of what the answer is, companies need an answer now so they can conduct their business on an informed and lawful basis. The record in the AT&T Petition for Declaratory Ruling is complete and ripe for a decision.

**The Issue NOT at Hand:** This issue is separate from the question of how to regulate "VoIP applications" as discussed at yesterday's hearing. VoIP in transport networks alone does not involve new customer applications that allow end users to use the Internet for voice as part of their broadband applications.

**Real-World Market Problems:** Companies that use IP protocol and the Internet are offering off-net termination at significantly lower prices than ILECs and CLECs (see attached chart). These companies assert that they are providing an information service, and we believe that on that basis they do not pay access charges and universal service.

- We understand that other IXC's are using these IP-based termination services, or are doing the same thing themselves and are not paying access charges and/or universal service. In the intensely competitive marketplace, law-abiding companies must do the same -- if it is lawful.
- Meanwhile, ILECs are engaged in self-help. They are asserting that use of IP-based transport does not eliminate duties to pay access charges, whether companies terminate traffic over IP transport directly or via another vendor. They are threatening to sue for back access charges.
- Disputes can include allegations of civil or even possibly criminal fraud liability. For example, Verizon, in raising fraud allegations against WorldCom, has argued that the use of IP Transport by WorldCom and its business partners to terminate long-distance calls without paying access charges is unlawful and fraudulent.

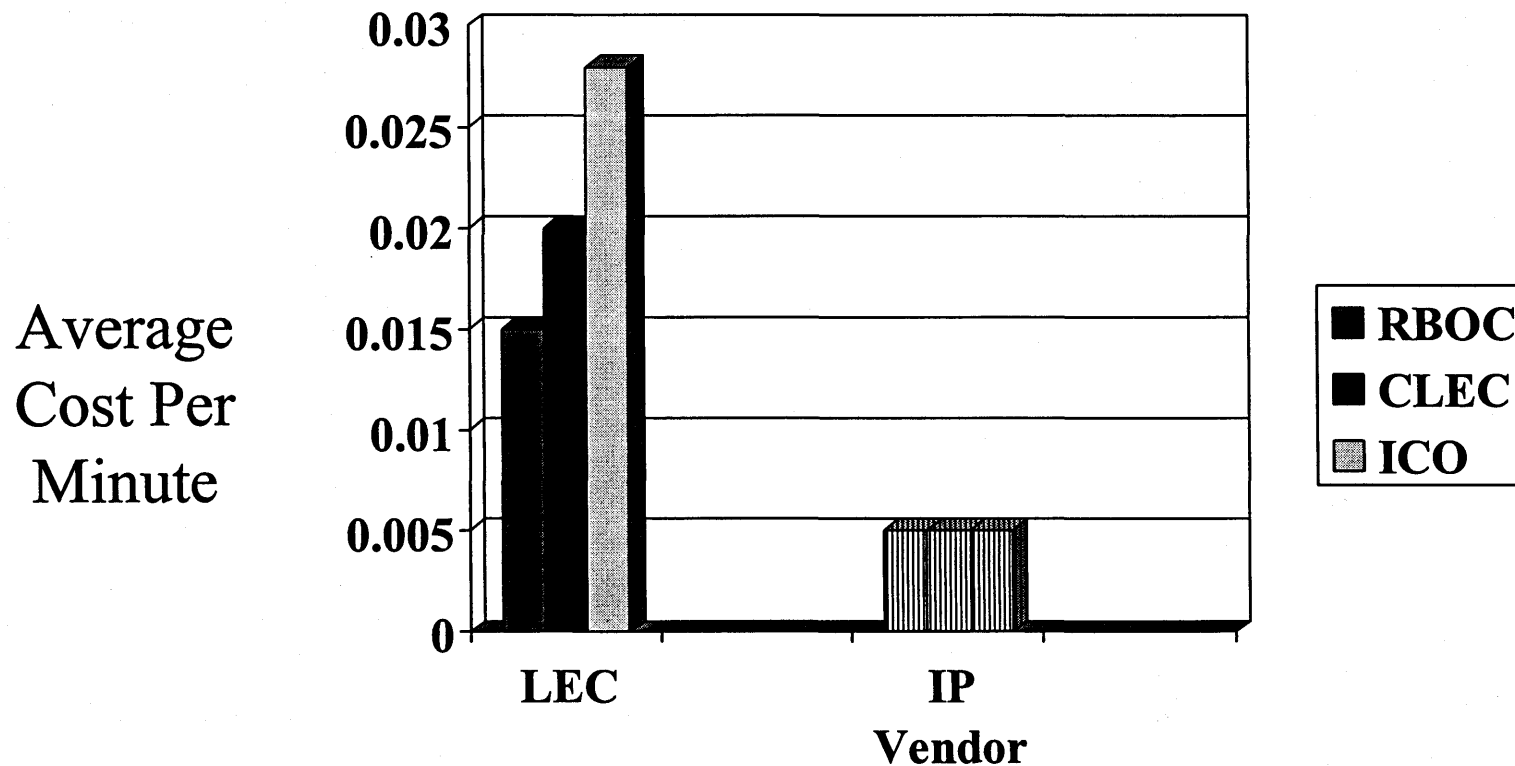
**The Bottom Line:** Law-abiding companies have a right to know what the law is in order to structure their businesses. The current uncertainty effectively forces companies to compete based on the amount of legal and regulatory risk they are willing to assume in an uncertain area, rather than on the true cost and quality of their services.

**The Commission Should Act Now On An Interim Basis:** The FCC should issue an interim clarification of what the law is now, even if it wants to set long-term policy (and possibly change

the rules) in a further rulemaking. The FCC can and should do so now – or at the latest, at the same time as it opens a new rulemaking proceeding – without prejudicing future decisions in the rulemaking to set long-term policy going forward.

- The FCC can decide on a prospective basis that access and universal service charges do not apply to the specific IP-based transport service described in the AT&T Petition, making clear that this may change in the future. Alternatively, the FCC can do the opposite, stating that such charges apply now on a prospective basis, but may not in the future.
- The AT&T Petition has been pending for over a year, the record is complete, and action is overdue.
- **What the FCC must not do is continue leaving companies to guess – and litigate – over what rules apply today.**

# Potential Termination Options



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